

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Procedure

Judge Aiken issued a comprehensive opinion analyzing the assertion of personal jurisdiction based upon Internet Website solicitations. The plaintiff is a local music retailer who filed a trademark infringement action against a South Carolina music retailer using the same name. Defendant sold a total of \$225 over its internet site as opposed to over \$2 million in retail sales. Only one Oregonian had purchased a single CD over defendant's internet site. Defendant also purchased 1/2 of 1% of its CDs from an Oregon distributor.

The court found that the single CD sale had been manufactured by plaintiff's counsel and thus, could not be used as the basis for personal jurisdiction. The court criticized plaintiff's counsel for attempting to manufacture personal jurisdiction.

The court reviewed numerous decisions from other jurisdictions and noted that the personal jurisdiction analysis as applied to Internet Website postings depends upon factors such as the active, passive or interactive nature of the site. The court held that the mere fact that defendant's site included an active solicitation for sales was insufficient to create personal

jurisdiction, finding that "something more" was needed. Based upon the facts presented, Judge Aiken found defendant lacked minimum contacts with the forum and granted defendant's motion to dismiss. Millenium Enterprises, Inc. v. Millenium Music, LP, CV 98-1058-AA (Opinion, Jan., 1999 - 41 pages).

Plaintiff's Counsel: Darin Honn
Defense Counsel:
Julianne Ross Davis

Constitutional Law

A man who was removed from his home by armed police officers at 2:00 a.m., searched, held in a police car for 7 hours and then taken to the police station and held for another five hours established that his 4th Amendment right against arrest without probable cause was violated as a matter of law.

Plaintiff's residence was identified by the victim of a robbery as a house where prostitution and the robbery had taken place. A number of people were arrested at the house, including the plaintiff. Shortly after the initial entry, plaintiff was part of a "show up" and was cleared by the robbery victim, yet his detention continued

for another 11 hours. Judge Aiken held that no reasonable police officer could have found probable cause to support plaintiff's arrest and continued detention. The court also found genuine factual issues precluded summary judgment as to the reasonableness of the search of plaintiff's residence. Plaintiff claimed that windows were broken, pepper spray rendered the house uninhabitable and officers dismantled portions of his home to retrieve bullets despite the fact that plaintiff executed a written consent solely to search his home based upon the alleged robbery. Acelar v. Minnis, CV 98-165-AA (Opinion, Jan. 1999 - 13 pages).

Plaintiff's Counsel: Spencer Neal
Defense Counsel: Bill Manlove

7 Judge Jones granted a defense motion for summary judgment on a claim filed against Portland Police Officers, the City of Portland and the Hooper Detox Center for wrongful arrest and detention. Plaintiff denied that he was intoxicated and claimed that there was no basis for his arrest and detention.

The court found no evidence of class-based animus to support a claim under 42 U.S.C. § 1985. The court further held that the Hooper Detox Center was not a "person"

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under § 1983. The police officers who arrested plaintiff were entitled to qualified immunity because even if plaintiff was not actually intoxicated, the officers reasonably believed that he was and acted reasonably in taking him to the detoxification center given his verbal and physical aggressiveness. Plaintiff's claims against the City were dismissed based upon the absence of any evidence of a policy, custom or practice. The court criticized defense counsel's narrow approach to plaintiff's pleadings and construed plaintiff's claims against the City broadly given his pro se status. Hudson v. Portland Police Officers, CV 98-585-JO (Opinion, January, 1999 - 17 pages).

Plaintiff: Pro Se
Defense Counsel: Bill Manlove

Insurance

On cross-motions, Judge Jones determined that a General Commercial Liability Policy providing insurance coverage for "advertising injury" did not encompass claims filed against the insured for patent infringement. Plaintiff is a Washington corporation that was forced to defend a patent infringement action in the Northern District of Texas. Plaintiff asked defendant to defend it in the Texas action under the terms of the policy and defendant refused. Applying Oregon and Washington law, the court held that under the plain language of the policy, patent infringement did not constitute an

advertising injury so as to invoke the insurer's duty to defend. Precision Automation, Inc. v. West American Ins. Co., CV 98-921-JO (Opinion, January, 1999 - 17 pages).

Plaintiff's Counsel:
Robert Bonaparte
Defense Counsel: Paul Eberhardt

Discovery

Plaintiffs filed an action against their insurance company seeking coverage under an auto policy. In its answer, defendant denied that plaintiffs had fulfilled all duties under the policy. Plaintiffs then sought through interrogatories and a deposition to determine precisely what duties under the policy they had failed to fulfill. Defendant refused to answer the interrogatories on ground that they were impermissible "contention" interrogatories and their corporate designee refused to answer the deposition question on grounds of privilege.

Chief Judge Hogan granted the plaintiff's motion to compel answers to the interrogatories and the deposition question. The court found that defendant misread and misapplied Local Rule 33.1(d) and found that plaintiffs' interrogatories were precisely the type of interrogatories contemplated under Fed. R. Civ. P. 33(c) since they were designed to narrow the issues for trial. The court also rejected the claim of privilege, finding that the question posed simply sought the factual basis for defendant's denial.

Plaintiff also complained about illegible copies provided by the defense and Judge Hogan ordered that defendant either produce legible copies or provide plaintiff with access to the originals. Kress v. Farmers Ins. Exchange, CV 98-379-HO (Order, January 6, 1999).

Plaintiffs' Counsel: David Jensen
Defense Counsel: Donald Johnson

Employment

A plaintiff who first filed a complaint with the EEOC 276 days following her termination was time barred from pursuing Title VII race and sex discrimination claims. The court rejected plaintiff's argument that the EEOC effectively waived the timing requirements by accepting and reviewing her complaint. The court also found that plaintiff's failure to provide timely notice barred her state wrongful discharge claims under Oregon law. Washington v. Tri-County Metro Transportation, CV 97-1118-HU (Opinion, January, 1999 - 12 pages).

Plaintiff's Counsel: Cedric Brown
Defense Counsel: Mark Wagner

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